

# EXHIBIT A

**TO FOIA REQUEST OF NATURAL RESOURCES  
DEFENSE COUNCIL FOR RECORDS PERTAINING  
TO IMPLEMENTATION OF CLEAN WATER ACT PROVISION  
REQUIRING ESTABLISHMENT OF PROCEDURES  
TO PREVENT AND CONTAIN DISCHARGES  
OF HAZARDOUS SUBSTANCES**



U.S.

# Critics Say Spill Highlights Lax West Virginia Regulations

By CORAL DAVENPORT and ASHLEY SOUTHALL JAN. 12, 2014

Last week's major chemical spill into West Virginia's Elk River, which cut off water to more than 300,000 people, came in a state with a long and troubled history of regulating the coal and chemical companies that form the heart of its economy.

"We can't just point a single finger at this company," said Angela Rosser, the executive director of West Virginia Rivers Coalition. "We need to look at our entire system and give some serious thought to making some serious reform and valuing our natural resources over industry interests."

She said lawmakers have yet to explain why the storage facility was allowed to sit on the river and so close to a water treatment plant that is the largest in the state.

Ms. Rosser and others noted that the site of the spill has not been subject to a state or federal inspection since 1991. West Virginia law does not require inspections for chemical storage facilities — only for production facilities.

Some other states do require inspections of chemical storage facilities. Gov. Earl Ray Tomblin said he was working with Randy Huffman, the secretary of the State Department of Environmental Protection, to come up with recommendations aimed at avoiding future leaks.

The Charleston Gazette-Mail reported Sunday that a team of experts from the United States Chemical Safety Board asked the state three years ago to create a new program to prevent accidents and releases in the Kanawha Valley, known as Chemical Valley.

That came after investigation of the August 2008 explosion and fire that killed two workers at the Bayer CropScience plant in Institute, W.Va. No program was produced, and another team from the same board is expected to arrive Monday to investigate this accident.

Critics say the problems are widespread in a state where the coal and chemical industries, which drive much of West Virginia's economy and are powerful forces in the state's politics, have long pushed back against tight federal health, safety and environmental controls.

"West Virginia has a pattern of resisting federal oversight and what they consider E.P.A. interference, and that really puts workers and the population at risk," said Jennifer Sass, a senior scientist at the Natural Resources Defense Council and a lecturer in environmental health at George Washington University.

But Mr. Huffman disputed that accusation, noting that West Virginia's economy is more heavily dependent than other states on the coal and chemical industries. "Based upon the types of industrial activity, how does it compare to the rest of the country? It's not in context." Although he added, "That's no excuse for any incident where someone gets hurt."

Efforts to clean up the spill showed signs of improvement on Sunday.

"The numbers look good, and like last night, they are very encouraging," Governor Tomblin said in a news conference on Sunday. "I believe we're at a point where we can say we're seeing light at the end of the tunnel."

Officials said tests conducted at a water treatment plant downstream from the site of the leak showed little to no traces of contamination on Sunday morning, allowing testing to move to the next phase.

Once the testing is complete, the water company plans to begin lifting the do-not-use ban by zones. The work will start in downtown Charleston and three other "priority zones" that include the city's four major hospitals and 25,000 customers who use more than half of the company's water, said Jeff McIntyre, the president of West Virginia American Water.

"I don't believe we're several days from starting the lift, but I'm saying not today," Mr. McIntyre said.

Government offices and many businesses planned to reopen on Monday, while many schools in the affected areas would remain closed, officials said.

“Stores are open,” said Jimmy Gianato, the state director of homeland security. “We’re starting to get back to normal.”

Emergency rooms have treated about 169 patients for symptoms related to chemical exposure, said Karen Bowling, the state health secretary. Ten people were admitted to three hospitals with symptoms that were not life threatening, she said.

The chemical in last Thursday’s spill was 4-methylcyclohexane methanol, known as MCHM. The leak at the Elk River storage facility came from a ruptured tank storing this chemical, which is used to wash coal.

No charges have been filed against Freedom Industries, the company that owns the plant, but the United States attorney’s office has already begun an investigation into the spill.

“Whenever you have a discharge of a pollutant or a hazardous substance you have potential violation of the environmental laws,” said Booth Goodwin, the United States attorney for the Southern District of West Virginia, according to a news report on WVVA.com.

This is not the first chemical accident to hit West Virginia’s Kanawha Valley.

After an explosion at a West Virginia chemical plant owned by Bayer CropScience killed two employees in 2008, a 2010 congressional investigation found that managers refused for several hours to tell emergency responders the nature of the blast or the toxic chemical it released. It also found that they later misused a law intended to keep information from terrorists to try to stop federal investigators from learning what had happened. The plant manufactured the same chemical that was being processed at the time of a gas release in 1984 that killed 10,000 in Bhopal, India.

West Virginia is also no stranger to accidents in the coal industry.

In 2012, federal prosecutors charged David C. Hughart, a top executive at Massey Energy, a West Virginia coal operator, with a felony count and a second misdemeanor conspiracy count related to the deaths of 29 coal miners in a 2009 explosion at West Virginia’s Upper Big Branch mine. Prosecutors said that Mr. Hughart and others knowingly conspired to violate safety laws at Massey’s mines and worked to hide those violations by giving advance warnings of surprise inspections by the Mine Safety and Health Administration.

In 2009, an investigation by The New York Times found that hundreds of workplaces in West Virginia had violated pollution laws without paying fines. In interviews at the time, current and former West Virginia Department of Environmental Protection employees said their enforcement efforts had been undermined by bureaucratic disorganization; a departmental preference to let polluters escape punishment if they promised to try harder; and a revolving door of regulators who left for higher-paying jobs at the companies they once policed.

In June 2009, four environmental groups petitioned the E.P.A. to take over much of West Virginia's handling of the Clean Water Act, citing a "nearly complete breakdown" in the state.

"Historically, there had been a questionable enforcement ethic," said Matthew Crum, a former state mining director at the state's Department of Environmental Protection.

Cindy Rank, chairwoman of the West Virginia Highlands Conservancy's mining committee, said that the coal lobby has wielded great influence in crafting state environmental regulations. "Accidents are always preventable. For the most part I think that's true in these disasters that keep happening," she said. She recalled negotiations over a groundwater protection bill from the early 1990s. "We swallowed hard and allowed the coal industry to get away with a lot in that bill," she said.

***Correction: January 15, 2014***

*An article on Monday about the chemical spill in West Virginia misstated the year and the circumstances of the Bhopal disaster in India. It was 1984, not 1985, and the deaths were caused by a release of gas, not by a giant explosion.*

Coral Davenport reported from Washington, and Ashley Southall from New York. Daniel Heyman contributed reporting from Charleston, W.Va., and Jack Begg from New York.

A version of this article appears in print on January 13, 2014, on page A8 of the New York edition with the headline: Critics Say Chemical Spill Highlights Lax West Virginia Regulations.

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# Bloomberg

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## West Virginia Spill Prompts Drive for Tougher Regulations

By Mark Niquette, Jim Snyder and Mark Drajem - Jan 14, 2014

A chemical spill that left 300,000 people in West Virginia unable to drink their water is reviving calls for more stringent regulation of thousands of chemical storage sites in the U.S., especially those near water supplies.

The Freedom Industries Inc. complex in Charleston that leaked was subject to a patchwork of federal and state regulations that allowed hazardous materials to be stored less than two miles upstream from a treatment facility for drinking water.

“Our legislature is in session, so the legislature should take action,” said Senator [Jay Rockefeller](#), a West Virginia Democrat. “But if they don’t, then we have to get Congress all over it.”

### Related:

- [West Virginia Company Finished Merger Days Before Spill](#)
- [West Virginia Lifts Ban After Spill Fouled Drinking Water](#)
- [Chemical Maker Sued Over Elk River Spill](#)

Residents in nine West Virginia counties were ordered not to drink, cook or bathe with municipal water after about 7,500 gallons of a chemical used in coal processing leaked Jan. 9 from a tank near the Elk River, upstream of a treatment plant for the West Virginia division of American Water Works Co.

Officials began lifting the ban yesterday in zones starting with Charleston, the state capital, after testing found levels of the chemical 4-methylcyclohexane methanol falling below one part per million. Federal authorities “do not anticipate any health effects from these levels,” the company said in a statement. It recommended residents flush water pipes and appliances such as ice makers to purge any of the chemical.

## Restorations Begin

An estimated 35,000 residents in Charleston had water restored as of early today, West Virginia American Water said.

“We’re getting back to normal, stage by stage,” Senator [Joe Manchin](#), a West Virginia Democrat, said today on [MSNBC](#). “I’d say by tomorrow everything should be back up and running.”

There are potentially tens of thousands of storage tanks in communities around the U.S. filled with chlorine, natural gas and other materials and states are primarily responsible for their safety, said Sheldon Krinsky, an environmental policy professor at [Tufts University](#) in Medford, Massachusetts.

Federal laws should require more rigorous testing of hazardous chemicals to ensure they don't pose health risks, Krinsky said.

"They are riding blind by saying, 'OK, if we can get it down to one part per million that should be safe enough,'" Krinsky said in a phone interview. "They don't really know."

## Oversight Gaps

[House Democrats](#) on the Energy and Commerce Committee yesterday asked Republicans to hold a hearing "to examine the regulatory gaps that this incident has exposed in the nation's toxic chemical control laws."

Representatives [Henry Waxman](#) of [California](#) and Paul Tonko of New York said there should be a review of why the law allowed the chemical, known as MCHM, involved in the West Virginia spill to go untested for almost 40 years.

"We should not have to wait for a major contamination event to learn the most basic information about a toxic chemical in commerce," Waxman and Tonko wrote Representative [John Shimkus](#), an Illinois Republican and chairman of the subcommittee.

The House energy committee is "actively monitoring the federal investigation and working to fully obtain the facts surrounding situation," [Charlotte](#) Baker, a Republican spokeswoman, said in response to the Democrats' letter.

## Chemistry Council

House Speaker [John Boehner](#), an [Ohio Republican](#) whose district is north of Cincinnati, said instead of more action from Congress, someone should be held accountable.

"We have enough regulations on the books, and what this administration ought to be doing is doing their jobs," he said.

The American Chemistry Council, a Washington-based lobbying group whose members include [Eastman Chemical Co. \(EMN\)](#) and [Dow Chemical Co. \(DOW\)](#), said federal, state and local agencies should improve their coordination to ensure current laws are enforced.

"Essentially we think a good place to start would be to see if the current regulations are being followed or being implemented properly," said Scott Jensen, a spokesman, in an e-mail. "And if not, we should focus on finding ways to improve implementation, which we think could probably be done through

better coordination and communication.”

Federal authorities, including the U.S. Chemical Safety Board and the [Justice Department](#), opened probes into the spill.

## U.S. Probe

“If our investigation reveals that federal criminal laws were violated, we will move rapidly to hold the wrongdoers accountable,” Booth Goodwin, the U.S. attorney for the Southern District of [West Virginia](#), said yesterday in a statement. “Our drinking water is not something you can take chances with, and this mess can never be allowed to happen again.”

The Greater Cincinnati Water Works, which serves 1.1 million people, plans to close its intakes from the Ohio River - - which is fed by the Kanawha and Elk rivers -- tonight until the spill passes, according to officials. The plant will use its two-day supply of treated water and a groundwater treatment facility as needed, the officials said.

Louisville Water Co., which is further downstream from Cincinnati, said its filtration system can handle the traces of the chemical that are expected in that area later this week, and that carbon can be used to remove the licorice smell.

## Pollution Threats

While federal laws like the Safe Water Drinking Act require utilities to assess potential upstream pollution threats, it gives them little power to force fixes to minimize the risk, said Erik Olson, an attorney who specializes in water and health issues at the [Natural Resources Defense Council](#).

He said the split in regulatory responsibilities can leave loopholes that accidents like the spill in West Virginia expose. “There is virtually no accountability here,” Olson said in a phone interview.

More information is needed about the risks of chemicals on the market and regulators need more authority to take action, such as ordering storage tanks be placed away from water sources, said Andy Igrejas, director of Safer Chemicals, Healthy Families, a Washington coalition of health and safety groups pushing for tighter rules.

“This kind of disaster really does show you what all these things really mean,” Igrejas said in a telephone interview. “We don’t know enough, and we don’t know it quickly enough, about a chemical that could cause the drinking water for 300,000 people to be taken offline.”

## State Reviews

Rockefeller had said the last time the plant was inspected was in 1991, though a review of records shows the state’s Department of Environmental Protection checked the facility in 1999 and 2002

because it stored petroleum products, spokesman Tom Aluise said by phone.

The department's division of [air quality](#) also visited the plant in April 2010 in response to a complaint by a resident nearby about a licorice odor that "leaves a bad taste in your mouth," according to a report provided by the state. No violation was found, and the state also checked in 2012 whether an air permit was needed, Aluise said.

West Virginia doesn't require inspection of storage tanks with chemicals such as the one that leaked, and there should be such regulations in place, said Larry Zuspan, who runs the local emergency planning committee in Charleston.

Zuspan said he didn't know the storage tank was even there until the spill.

"For that magnitude of product that's stored there, and where it was, it's on a waterway, yeah, I think that's going to require some inspections," Zuspan, administrator of the Kanawha Putnam Emergency Planning Committee, said by phone.

## State Inventory

The state is preparing an inventory of similar facilities in the state where there is no manufacturing or other activity that would require a permit, said Randy Huffman, secretary of the West Virginia Department of Environmental Protection. Officials also will develop legislation for regulatory changes, including setbacks for facilities, he said.

"It gives you enough distance between the potential risk and the vulnerable asset to be able to go in and to respond with some kind of remediation or some kind of emergency response," Huffman told reporters yesterday in Charleston.

Along the Kanawha River, about 14 miles downstream from the spill site, residents of the town of Nitro are beginning to come to grips with what the chemicals sitting next door mean to their safety.

## Water Bottles

Closely held Freedom Industries initially trucked the chemicals from its tanks to those at a second facility it owns in Nitro, called Poca Blending. At the ramshackle grounds of Poca yesterday, where abandoned old Saabs sat fenced in at the end of a gravel drive, the sickly sweet smell of 4-methylcyclohexane methanol hung in the air.

As tanker trucks were hooked up to loading hoses, the members of the fire department of Nitro were busy up the road handing out federally shipped cases of water bottles. Jeff Elkins, Nitro's fire chief, said he hadn't paid much attention to what was being stored at the facility near the river -- until now.

Once the water emergency ends, "we're going to look into it to see what they've got there," Elkins said

in an interview. "I'd like to know" if 4-methylcyclohexane methanol is still being stored there, he said.

To be sure, forcing chemical plants or storage facilities to move away from rivers would be no easy task. Along the Kanahwa River are chemical plants of [Praxair Inc. \(PX\)](#) and [Bayer AG \(BAYN\)](#) that dwarf the size and complexity of the Freedom Industries' facility.

## Aging Plant

And it isn't just location that matters. The Freedom Industries plant in Charleston was so old that its owners were looking to shut it down before the spill, according to state officials. The Poca Blending plant in Nitro is only a decade old. "We've never had any trouble at Poca," Elkins said.

The two lessons from the West Virginia spill are to be more vigilant about ensuring the structural integrity of tanks holding hazardous chemicals near bodies of water and to focus more resources on detection and monitoring, said James Salzman, a professor of law and environmental policy at [Duke University](#).

The spill exposes a weakness in the nation's system for guarding against contaminated water because while it's impossible to pre-treat for every harmful chemical, there must be more emphasis on detecting unexpected contaminants, he said.

## 'Soft Underbelly'

"When you get a large spill of chemicals that aren't supposed to be there, that is a soft underbelly," Salzman said in a telephone interview. "It's a real challenge. In a world where public budgets are tight, you've got to make choices."

The leak was detected by neighbors who smelled a licorice-like odor beginning at 8:15 a.m. on Jan. 9. State officials ordered the 14 above-ground storage tanks on the site emptied to prevent further spills.

The chemicals flowed through a hole of about an inch, Mike Dorsey, head of the West Virginia Department of Environmental Protection homeland security office, has said.

A message left with a plant spokeswoman seeking comment wasn't returned.

Gary Southern, president of Freedom Industries, based in Charleston, apologized for the spill on Jan. 10 and said the company was working with state and federal officials.

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# EXHIBIT C

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By ALIAH GIT / CBS NEWS / January 14, 2014, 9:12 AM

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A **chemical spill that leaked** into a river in Charleston, W.Va. last week, poisoning the water supply for hundreds of thousands of people, has shed light on a problem that is much bigger than just the one incident.

An expert tells CBS News' Sharyl Attkisson that most big-city water treatment plants in this country are downstream from industrial facilities, and are vulnerable to contamination. Eric Olson with the Natural Resources Defense Council says it is a known problem, but so far the federal government is not stepping in to address it.

"There was an effort several years ago to try to protect drinking water supplies," he says, "so we didn't have this vulnerability to huge spills upstream. Unfortunately that died and never saw the light of day."



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Many communities, like Charleston, rely heavily on the chemical industry and other industrial manufacturers for jobs. Olson says that contributes to the reluctance to better regulate the industry.

"I think there certainly are politics involved here, and there are very powerful interests in the chemical and other industries that would rather not see strong regulatory requirements," he said.



38 **PHOTOS**

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In West Virginia, they are taking another look. The state head of environmental protection, Randy Huffman, said in a news conference Monday that they are looking into making some changes. "At the governor's request, (we are) developing some proposals for how we might more properly regulate these facilities in order to minimize the risk of a spill," Huffman said.

About 200,000 people still cannot use their water in the Charleston area. The system slowly started coming back online Monday, with customers instructed to wait until their "zone" was called -- something they could track on a website. As each zone comes back, customers must flush their pipes for about 20 minutes before they can start using the water.

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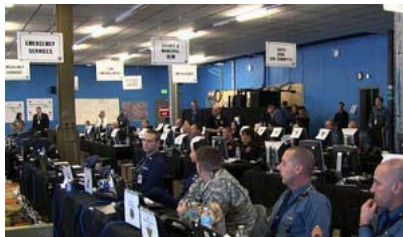


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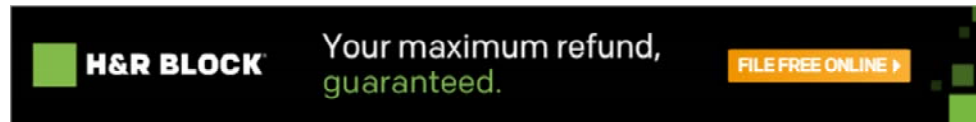


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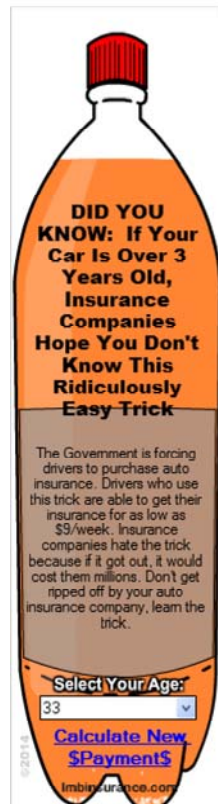
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## West Virginia spill a cautionary tale

published jan 14, 2014 at 10:34 pm (updated jan 14, 2014 at 10:34 pm)



You can bet your last dime on this: There are around 300,000 people in southern West Virginia who will never take tap water for granted again.

As of Tuesday afternoon, an advisory that people not drink water from their faucets, shower or wash clothes in communities surrounding Charleston, W.Va., was slowly being lifted following a chemical spill in the Elk River that was discovered last week. The disruption in water service has not only sorely inconvenienced residents but has also shuttered schools, delayed all but essential surgeries and brought business activity to a halt. People living in the nine counties affected by the industrial accident must now also live with the anxiety of wondering how much water they might have consumed or been exposed to before officials found out that the region's water was tainted with the chemical methylocyclohexane methanol, also known as MCHM, which is used to clean coal.

Tourism officials eager to showcase images of scenic mountain vistas and verdant historical sites must be wincing right now, particularly as the accident has placed a national spotlight on a regulatory environment for industry within West Virginia that might best be described as relaxed. In an apparent eagerness to bring business into the state, particularly as the coal industry has faltered, officials have been all too ready to treat polluters and other malefactors with kid gloves if they simply promise to clean up their acts.

Jennifer Sass, a senior scientist with the National Resources Defense Council, told The New York Times this week that "West Virginia has a pattern of resisting federal oversight and what they consider (Environmental Protection Agency) interference, and that really puts workers and the population at risk."

The estimated 7,500 gallons of MCHM that spilled into the Elk River was reportedly caused by a small hole in a chemical storage tank that was just a mile upriver from the largest water treatment plant in West Virginia. It hadn't been visited by environmental inspectors since 1991, and had been overlooked because no chemicals were manufactured or processed at the site. This blunder follows the deaths of 29 coal miners at the Upper Big Branch mine in Raleigh County, W. Va. in 2010, an accident that resulted from neglect and violations of safety rules on the part of the mine's owners, and a 2008 explosion at a chemical plant near Charleston, W.Va. that resulted in two fatalities. Though it was recommended after the latter mishap that the state come up with a new program to respond to chemical accidents, officials sat on their hands and did nothing.

Though West Virginia's water crisis will likely fade from the headlines soon enough, it should serve as a cautionary tale for those who would gut environmental regulations on the state and federal levels.

Though the hands-off-industry crowd loves to portray agencies like the EPA or Pennsylvania's Department of Environmental Protection as meddling busybodies eager to find fault and put the brakes on commerce, they are the first line of defense for our water, air and food.



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### O-R's Poll Question of the Day

Should we have local specially trained firefighters for gas well fires?

☐ Yes, there needs to be a fast response

There once was a time when waterborne illnesses like cholera were major killers in the United States.

It wasn't tamed by happenstance, but through scientific advances and careful regulation. The people who keep an eye on such a vital resource deserve to be thanked, not vilified.

- ☐ No, they don't happen often enough for the expense
- ☐ No comment

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# EXHIBIT E

**TO FOIA REQUEST OF NATURAL RESOURCES  
DEFENSE COUNCIL FOR RECORDS PERTAINING  
TO IMPLEMENTATION OF CLEAN WATER ACT PROVISION  
REQUIRING ESTABLISHMENT OF PROCEDURES  
TO PREVENT AND CONTAIN DISCHARGES  
OF HAZARDOUS SUBSTANCES**



TUESDAY, JAN 14, 2014 1:30 PM UTC

# The deplorable story of how 300,000 West Virginians lost their water

**"People were saying they could smell [noxious chemicals] in the water ... and in the air," an expert explains**

JOSH EIDELSON



(Credit: Steve Helber)

Following a 7,500 gallon chemical spill that left 300,000 people without drinkable tap water for five days, West Virginia Gov. Earl Tomblin announced Monday that a nine-county tap water ban would begin to be lifted. The spill spurred a federal emergency declaration, 10 hospital admissions and new scrutiny on industry's influence over state and federal policy.

To consider the fallout, Salon called up Dr. Jennifer Sass, a senior scientist for the Natural Resources Defense Council and lecturer for George Washington University. Sass blasted Freedom Industries' handling of the emergency, called West Virginia "a state that's not interested in enforcing ... state or federal regulations," and warned that an initially promising bill in Congress could make the situation worse. A condensed version of our conversation follows.

**we're seeing, and how significant a crisis is this?**

There's some particularly troubling aspects of this incident, and then it fits into a larger pattern that's very dangerous ...

One of the things that really disturbs me about this incident is that it was initially identified not by, you know, routine, regular monitoring by the facility itself, Freedom, for leaks and spills, but it was actually reported by the community. Which means that the levels were so high in the air that they were noxious. They were disturbing the community.

And that's really high air pollution. People were saying they could smell it in the water, and they could smell it in the air. So that's a real problem ... It means the company is not monitoring themselves properly.

And then the second thing was the fact that the company did not alert the community, or the downstream water intake, when they found out. *Or* let them know what chemical it was.

**How disturbed are you by what**



So here you've got all these people being exposed to chemicals at levels that's actually bothering them, noxious levels, and they're not being told what they're exposed to. That's a problem also for providing medical care for first responders.

**The fact that this was first reported by the community – does that suggest that there are other violations that take place, that legally should be reported by companies and aren't? That we just don't find out about?**

Yeah, that happens a lot. Yes. There's leaks and spills all the time, unfortunately, and most of them we don't know about, in lots of different industries, especially involving chemicals ... We know that about fracking, about oil and gas fracking: that these things happen much more often than we'd like. On a daily basis.

**Was this a predictable disaster in West Virginia?**

I don't know enough about how the company operates to say it was predictable. But I will say that their response was so bad that I'm guessing that their routine maintenance and monitoring was just as bad. Their response was so poor that it indicates that they had very poor health and safety standard operating procedures.

**The press conference that a Freedom Industries official held Friday, in which he said, "We are very, very sorry for disruption of everyone's daily life" – is that a satisfactory comment?**

I think it's much too little, and it's far too late ...

They should have been telling the community, not the community telling them that there's a problem. They should've been on top of this quickly. They should've been alerting the water intake. And they should have been telling people what the chemical was, so that individuals could look it up, as well as first responders know how to respond to it.

And they didn't do any of that.

Now what they did do is shut down the system right away, and the water treatment shut down its system very quickly when they knew. But even then there seems to have been poor communication between Freedom and the water treatment camp, the drinking water plant.

So those are really big problems ... Those represent a failure of general health and safety procedures. Your standard operating procedures are really poor in that place.

**So how do you apportion the blame here between the company, the state government and the federal government in terms of this being allowed to happen?**

I'm not sure that I can divvy it up ... Our own lawyers are still looking into where all of the authorities lay on this.

I will say a couple of things about this. The first thing is that West Virginia has a poor history in this area ... the Upper Big Branch Mine disaster was a very serious example of what happens when you have federal oversight that is ignored, you have OSHA or EPA-type of citations that are ignored routinely, and you have a state that's friendly to an industry that is actually dangerous ... That killed 29 out of 30 miners that were involved in the explosion, and the company management was investigated for criminal liability.

So I mean, there's a history here to what happens when you're a state that's not interested in enforcing either whatever the state or federal regulations are ... [And] paying a lot of deference to these industries.

And I think this represents that larger problem. But, you know, I could never put it in a category of like the Upper Big Branch mine disaster, where so many people died.

**West Virginia's Democratic senator campaigned for office by shooting the cap-and-trade bill with a gun in an ad. Are politicians right to perceive a tension between environmental protection and West Virginia**

### **job growth?**

Not only is environmental and worker protection good business, but it's actually the only way to do good business ... Nobody knows what the cost is to Freedom Industries for this, but I know it would have been cheaper to not have the leak in the first place ...

You could always say that. It's always cheaper to not blow things up, and to not kill people, and to not have these kinds of P.R. as well as cleanup disasters. It's always cheaper to not have the problem. The only way companies get away with not having the problem anyway is by not doing the cleanup ...

They can shut off their systems, and let that polluted water go downstream and dilute out. And that's what they're going to have to do, unfortunately, and they're not going to be taking responsibility for any fish kills, or any sort of aquatic organism impacts that happen along the way. But they will have to take a look at the sediments in that area, and they will have to consider whether a sediment cleanup is necessary. If it is, that would be very expensive.

And I hope they do that properly. I hope they look at that properly, because that would be a long-term risk to people, if those chemicals were stuck in that sediment upstream of a water intake ...

The cheapest thing of all is either not to use toxic or hazardous chemicals — because there's all sorts of added costs to managing production, storage and waste from those toxic chemicals — so the cheapest thing is to not use them at all when you don't have to. And the second cheapest thing is to use chemicals that are as least toxic as possible.

### **What should the chemicals you're describing be replaced with?**

I'm not actually sure in this case ... It's very hard to weigh the hazardous toxicity of this particular chemical, because there's very little information on it. Although I have to say, from its structure, it is likely to be able to dilute out. It is highly water-soluble, and it is likely that it will dilute out eventually.

### **So how should Freedom Industries change its business?**

I think if Freedom Industries ever wants to win back the trust of its community, of the population around it, I mean it's going to have to be much more transparent about what its operations are. And it's going to have to be much more rigorous about how it's ... preventing ... monitoring, and then addressing.

And this is standard operating procedures for lots of companies. There's no reason why they shouldn't be able to do it too.

### **Are you convinced that there are chemicals they are using that they should stop using?**

I don't know enough about their operations to say that ... Nobody really knows enough about their operations right now to say that.

But as a larger picture, I think it's something that companies should take a look at to reduce their costs. Moving away from hazardous chemicals will reduce their costs.

### **What are the larger public policy lessons here?**

For me, I think the most important one is the siting something upstream of a drinking water intake — I mean, I just cannot understand the justification of that ...

You need to have strong federal and state regulations that provide some sort of a backstop, to say: Look, you can't operate any less safe than this. This is your backstop line. You've got to have these operations in place. You know, don't store large amounts of these chemicals on-site. Store them in this way. Monitor to prevent, to monitor, and to address problems this way.

There's got to be some kind of operating procedures that other companies have. And then, of course, if there's a problem, alerting the community, alerting first responders, and alerting downstream businesses that would be affected immediately. And none of that was done.

**The amount of information that's available about the operations of this company and about the chemicals involved and the risks involved — is there a lesson in that itself?**

Yeah, there is for me ... When this first happened, I immediately went to my normal sites to look up this chemical, and there wasn't much there ... Does it break down into Benzene? Benzene is a carcinogen; is it going to produce carcinogens in the water or the air? You know, really important questions, it was difficult for me to find the answers to. I ended up calling industry chemists, friends of mine I know that are industrial chemists, to ask them what they thought. And this, it just shouldn't be that hard to find.

So we have very little testing. There's no specific health and safety testing on this chemical. It's only being compared to other chemicals by its structure — chemists just sort of using their best educated guesses. So I think that's a real problem.

**And what would be the solution there?**

Well, companies don't have to test. They can put chemicals into commerce without safety-testing them. And so I think that's the issue. And the toxins reform that Sen. Lautenberg had proposed in the Safe Chemical Act [before dying in 2013] would have required testing up-front by these companies, to be submitted to the government and federal agencies.

And health and safety information should always be public. It should never be confidential. In particular, to first responders. I mean, that's a big problem with the toxin reform bill that's circulating on the hill right now ... physicians and medical experts can't release that information to their patients [under proposed language]. So they put a gag order on physicians and medical experts. But it's just outrageous that we have these kinds of explosions, spills, leaks affecting our air and water and soil — and yet, you know, companies are claiming it's confidential.

It's very problematic. It was drafted by [Senator David] Vitter's office and was made problematic — and it puts a gag order on physicians so that they can't share information with their patients about what kinds of chemicals they might be treating for.

The original Lautenberg [version] didn't have any gag orders. Health and safety information would have had to have been made public.



# EXHIBIT F

**TO FOIA REQUEST OF NATURAL RESOURCES  
DEFENSE COUNCIL FOR RECORDS PERTAINING  
TO IMPLEMENTATION OF CLEAN WATER ACT PROVISION  
REQUIRING ESTABLISHMENT OF PROCEDURES  
TO PREVENT AND CONTAIN DISCHARGES  
OF HAZARDOUS SUBSTANCES**

# No One Who Gives Away Free Water Can Be Evil

By David Weigel

Exhibit A: *Daily Kos* diarist "dharmafarmer" writes on Jan. 11 about the chemical spill in West Virginia, the disaster that has left hundreds of thousands of people without fresh water.\* It's a hop, skip, and jump to link Freedom Industries, the source of the spill, to Koch Industries.

In 2008, Freedom Industries was specially selected by Georgia-Pacific Chemicals as a distributor of G-P's Talon brand mining reagents for West Virginia, Virginia, Pennsylvania, Ohio, Maryland, Minnesota, Kentucky and Michigan.

Georgia-Pacific Chemicals is, of course, a subsidiary of Georgia-Pacific, which was acquired by Koch Industries in 2005.

Advertisement

Exhibit B: a *New York Times* story from today about the questions raised by the disaster.

West Virginia law does not require inspections for chemical storage facilities — only for production facilities... "West Virginia has a pattern of resisting federal oversight and what they consider E.P.A. interference, and that really puts workers and the population at risk," said Jennifer Sass, a senior scientist at the Natural Resources Defense Council and a lecturer in environmental health at George Washington University.

Exhibit C: a proud press release from Americans for Prosperity, the activist group chaired by David Koch, telling the media of a campaign to distribute fresh water in West Virginia.

"It is so exciting to serve our fellow West Virginians at this crucial time of need," explained Wendy McCuskey, West Virginia state director of Americans for Prosperity Foundation. "We have had multiple residents tell us that they are picking up water for elderly neighbors who are not mobile and need clean water. We are so happy to be able to meet their need for clean water and ease this very difficult time for West Virginia families."

Complete with photos:



PR problem solved! (AFP hasn't answered my irritating question about the PR origins of the water handout.)

UPDATE: AFP's Adam Nicholson explains the timing, which predates the media cage-rattling about Freedom Industries.

We were actually already planning to launch our WV chapter this Monday and had already sent a media advisory and email when we learned of the chemical spill. To provide context, we were at our all staff meeting off-site, and I was with Wendy when she got the first texts about the spill. I had already purchased my airfare to fly out to Charleston for the launch events and was working with Wendy on plans for introducing her to state reporters.

Within a few hours of learning of the spill we decided that not only would we postpone our chapter launch, but also do something to help the residents in need. Twelve hours after news first broke we had already purchased a truck full of water and had staff planning to drive out to WV to manage the efforts.

*\*Correction, Jan. 13, 2014: This post originally misstated the date on which a Daily Kos blog*

West Virginia chemical spill, Americans for Prosperity: No one who gi... [http://www.slate.com/blogs/weigel/2014/01/13/no\\_one\\_who\\_gives\\_...](http://www.slate.com/blogs/weigel/2014/01/13/no_one_who_gives_...)  
*post was written.*

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